



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney
500 East San Antonio
Room 503, County Courthouse
El Paso, Texas 79901

OR2010-14359

Dear Ms. Monteros:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394271.

The El Paso Medical Examiner's Officer (the "medical examiner") received a request for information pertaining to the transport and autopsy of a named deceased individual. You state the medical examiner has released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes one page of a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor

has provided the medical examiner with two of the three pieces of information required by section 550.065(c)(4). Accordingly, the requestor has a statutory right of access to the CR-3 accident report pursuant to section 550.065(c)(4). You claim portions of this accident report are excepted from disclosure pursuant to section 552.130 of the Government Code. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the medical examiner must release the CR-3 accident report in its entirety to the requestor under section 550.065(c) of the Transportation Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You state Attachment B consists of photographs of the deceased taken during an autopsy. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the medical examiner must withhold photographs 08-0572-Autopsy 1-1 through 08-0572-Autopsy 16-1 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, we note the remaining photographs are not photographs of a body taken during an autopsy. These remaining photographs are not confidential under article 49.25, and the medical examiner may not withhold them under section 552.101 on that basis.

Next, you claim Attachment C is subject to the Medical Practices Act (the "MPA"). Section 552.101 of the Government Code also encompasses the MPA, which governs access

to medical records. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded that, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. After the death of a patient, medical records may be released only on the signed written consent of the deceased individual's personal representative. *See id.* § 159.005(a)(5). Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The submitted documents in Attachment C are medical records that pertain to an individual who is now deceased. The medical examiner must withhold this information under the MPA, unless the medical examiner receives written consent for release of those records that complies with section 159.005(a)(5) of the MPA.

You contend Attachment D consists of emergency medical service ("EMS") records that are subject to chapter 773 of the Health and Safety Code, which is also encompassed by section 552.101 of the Government Code. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

- (b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical

supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. We note this information may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). When the patient is deceased, the patient’s personal representative may consent to the release of the patient’s records. *Id.* § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of Health & Safety Code § 773.093). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Thus, the medical examiner must withhold the information we have marked in Attachment D under section 773.091, except as specified by section 773.091(g), unless the deceased individual’s personal representative provides the medical examiner with written consent that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093; ORD 632. However, you have failed to demonstrate how the remaining information contains a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that was created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, none of the remaining information in Attachment D is confidential under section 773.091, and the medical examiner may not withhold it under section 552.101 on that basis.

Finally, you assert some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Thus,

the medical examiner must withhold the information you have marked, and the additional information we have marked, under section 552.130.¹

In summary, the medical examiner must release the CR-3 accident report in its entirety to the requestor under section 550.065(c) of the Transportation Code. The medical examiner must withhold photographs 08-0572-Autopsy 1-1 through 08-0572-Autopsy 16-1 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The medical examiner must withhold Attachment C under the MPA, unless the medical examiner receives written consent for release of those records that complies with section 159.005(a)(5) of the MPA. The medical examiner must withhold the information we have marked in Attachment D under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the deceased individual's personal representative provides the medical examiner with written consent that meets the requirements of section 773.093(a). The medical examiner must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

~~This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.~~

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 394271

Enc. Submitted documents

c: Requestor
(w/o enclosures)